IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.2.2006

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.228 of 2003

Commissioner of Income Tax
Tamil Nadu III, Madras .. Appellant

-Vs-

The Ayer Mani's Rubber Estate Ltd.,
Alagappa Road,
Chennai .. Respondent

Appeal under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras Bench "A" dated 5.3.2001 in I.T.A.3236/MDS/1992. The assessment year involved is 1989-90 against Order in Appeal No.105/92-93/Company Ward III dated 17.6.92 on the file of the Commissioner of Income Tax (Appeals) VI, Madras 34 against Order in PAN/GIR No.47-066-CN-2835/1-A, dated 24.8.1992, on the file of the Income Tax Officer, Company Ward - III, Madras 34.

For Appellant : Mrs.Pushya Sitaraman
For Respondent : No appearance

O R D E R

(Order of the Court was made by P.D.DINAKARAN, J,.)

Heard. The appeal is directed against the order of the Income Tax Appellate Tribunal Madras Bench "A" dated 05.03.2001 in I.T.A.No.3236/Mds/1992.

2.1. The assessee, is a company deriving income from Plantation situated in Malaysia. The assessee claimed the income from Malaysia as exempt and filed income for the assessment year 1989-90 on 29.12.1989, showing 'Nil' income. The assessee did not disclose the foreign income of Rs.34,51,204/- in view of double taxation agreement between India and Malaysia. The assessing officer, finding that the assessee's last year income earned in Malaysia has been treated as taxable, applied the same to the assessment year in question.

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2.2. Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of income Tax (Appeals) allowed the issue in favour of the assessee by following the decision of the Madras High Court reported in 208 ITR 400 (COMMISSIONER OF INCOME TAX -vs- VR.S.R.M.FIRM AND OTHERS)

2.3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the revenue filed further appeal before the Income Tax Appellate Tribunal, and the Tribunal, following the decision of this Court in the case of SRM firm (208 ITR 400), held that the income form Malaysia cannot be taxed in India and dismissed the appeal. Hence, the present appeal by the Revenue.

4. The issue that arises for consideration in this appeal is whether the income derived by the assessee from Malaysia can be included in the total income and taxed in India?

5. In identical facts and circumstances, the Apex Court in Commissioner of Income Tax (vs) P.V.A.L.Kulandagan Chettiar (267 ITR 654), held as follows:-

> " Where liability to tax arises under the local enactment, the provisions of Sections 4 and 5 of the Income Tax Act, 1961, provide for taxation of global income of an assessee chargeable to tax thereunder. But this is subject to the provisions of an agreement entered into between the Central Government and the Government of a foreign country for avoidance of double taxation as envisaged under Section 90 to the contrary, if any, and such an agreement will act as an exception to or modification of sections 4 and 5 of the Income Tax Act. The provisions of such agreement cannot fasten a liability where the liability is not imposed by a local Act. Where tax liability is imposed by the Act, the agreement may be resorted to either for reducing the tax liability or altogether avoiding the tax liability. In case of any conflict between the provisions of the agreement and the Act, the provisions of the agreement would prevail over the Act in view of the provisions of Section 90(2). Section 90(2) makes it clear that "where the Central Government has entered into an agreement with the Government of any country outside India for granting relief of tax, or for avoidance of double taxation, then in relation to the assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to that assessee", meaning thereby that the Act gets modified in regard to the assessee in so far as the agreement is concerned if it falls within the category stated therein.

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When it is intended under the Double Taxation Avoidance Agreement between India and Malaysia that, even though it is possible for a resident in India to be taxed in terms of Sections 4 and 5 of the Income Tax Act, 1961, if he is deemed to be a resident of contracting State where his personal and economic relations are closer, then his residence in India will become irrelevant, the Double Taxation Avoidance Agreement will have to be interpreted as such and would prevail over Sections 4 and 5 of the Act."

6. The said decision was followed by the Division Bench of this Court (N.V.BALASUBRAMANIAN AND M.THANIKACHALAM, JJ.) in T.C.A.No.182 of 2004 dated 15.6.2004.

7. In view of the above conclusion, we do not find any error or infirmity in the order of the Tribunal and no substantial question of law would arise for consideration of this Court. Hence, the appeal stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk.

To:
1. The Assistant Registrar,Income Tax Appellate Tribunal
Madras Bench "A", Rajaji Bhavan III Floor, Besant Nagar, Chennai-90.
2. The Commissioner of Income Tax (Appeals),
Tamil Nadu III, Madras
3. The Income Tax Officer, Company Ward III, Madras 34.
4. The Commissioner of Income Tax (Appeals) VI, Madras 600 034.
5. The Income Tax Officer, Company Ward (III)(2), Madras-34.
+ 1 CC to M/s.Pushya Sitaraman, Advocate SR NO 6449

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